SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1680

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN, POLLY MOORER, and JOSEPH R. PETERS,

Petitioners,

v.

DONALD T. DORSEY, Commissioner of the Department of Community Affairs of the State of Connecticut; ROBERT I. BERDON, Treasurer of the State of Connecticut; ADOLPH G. CARLSON, Commissioner of Finance and Control of the State of Connecticut; NATHAN G. AGOSTINELLI, Comptroller of the State of Connecticut; and BARTHOLOMEW GUIDA, Mayor of the City of New Haven,

Respondents.

AMICI CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CONNECTICUT.

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Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Connecticut.

BRIEF FOR CONNECTICUT STATE CONFERENCE OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AND OF THE NEW HAVEN BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AS AMICI CURIAE IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI.

Pursuant to rule 42(3) of the Supreme Court Rules, the Connecticut State Conference of the National Association for the Advancement of Colored People and the New Haven Branch of the National Association for the Advancement of Colored People respectfully submit this brief as *amici curiae* in support of the petition for a writ of certiorari to the Supreme Court of the State of Connecticut

I.

ARGUMENT

Connecticut General Statutes Section 8-42, as that Statute has been applied by the Court below, contradicts the Legislative Purpose set forth in 42 U.S.C. Section 1401, and therefore must fall under the Supremacy Clause of the Federal Constitution.

Amici contend that in this case there is a conflict between federal law, 14 U.S.C. Section 1401, and state law, Connecticut General Statutes Section 8-42, and that by the operation of the Supremacy Clause of the Federal Constitution, the state statute must fall. Deciding whether a statute is in conflict with a federal statute and hence invalid under the Supremacy Clause is essentially a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict. *Perez* v. *Campbell*, 402 U.S. 637, 644 (1971).

A. Congress' Purpose in Amending 42 U.S.C. Section 1401 was to Eliminate the Restrictions Preventing Tenants of Public Housing from Holding Office as Commissioners of a Local Public Housing Agency.

Congress has stated that "It is the sense of the Congress that no person should be barred from serving on the board of directors or a similar governing body of a local public housing agency because of his tenancy in a low rent housing project". 42 U.S.C. Section 1401. The disputed language was added to Section 1401 by The Housing and Urban Development Act of 1970, December 31, 1970, P.L. 91-609, Title II, Section 211, 84 Stat. 1779. Title II of the Act, which provides for additional federal contributions to local public housing agencies, was enacted:

> ". . . to provide local housing authorities with additional resources, not available to them from existing revenue sources, to improve immediately their fiscal situation and the deteriorated condition of their properties, while at the same time strengthening their administration and management functions, *including activities designed to achieve maximum tenant participation and responsibility,* so that they can become fully effective operations." Conf. Rep. No. 91-1784, 91st Cong., 2d Sess., December 17, 1970; Cong. Record Vol. 116 (1970). (Emphasis added).

In interpreting the effect of 42 U.S.C. Section 1401 on Connecticut General Statutes Section 8-42, the court below construed Congress' use of the word "should" as permitting the state to bar public housing tenants from holding the office of commissioner of a local housing agency: "The addition of the sense of Congress to Section 1401 . . . (did not) impose any mandatory requirement." *Housing Authority of the City of New Haven, et al* v. *Donald T. Dorsey, Commissioner, Department of Community Affairs, et al.,* 34 Conn. L. J. No. 31, p. 1., at p. 4. January 30, 1973.

Amici respectfully submit that the ruling of the court below has the effect of ascribing to Congress a wholly frivolous intent, and it deprives the new language, albeit subjunctive, of any operative result. An Act of Congress should be interpreted and enforced according to its legislative purpose rather than by subtle verbal distinctions. *Pennsylvania Railroad Company* v. *Rychlik,* 352 U.S. 480, 488 (1957), *Vermilya-Brown Co., Inc.* v. *Connell,* 335 U.S. 377, 386 (1948); *Rhodes* v. *Iowa,* 170 U.S. 412, 421-422 (1898). Where the meaning of words in a statute will lead to an unreasonable result plainly at variance with the policy of legislation as a whole, the Court will follow the purpose of the statute, rather than its literal words. *Boys Markets, Inc.* v. *Retail Clerks Union,* 398 U.S. 235, 250 (1970); *Lawson* v. *Suwannee Fruit & Steam-*

ship Co., 336 U.S. 198, 201 (1949); *United States* v. *American Trucking Associations, Inc.*, 310 U.S. 534, 543 (1940); *Fleischmann Construction Company* v. *United States To The Use of Forsberg*, 270 U.S. 349, 360 (1926).

B. Connecticut General Statutes Section 8-42, as that Statute Has Been Applied by the Court Below, Must Fall as a Matter of Federal Supremacy Because It Frustrates a Congressional Purpose and Impairs the Efficiency of the Federal Agency Charged with Effectuating that Purpose.

In questions of conflict between federal and state law, this Court's primary function is to determine under the circumstances of a particular case whether the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *Hines* v. *Davidowitz*, 312 U.S. 52, 67-68 (1941). Congress' purpose in amending 42 U.S.C. Section 1401 was to eliminate the barriers precluding public housing tenants from serving as commissioners of local public housing agencies. *Conf. Rep.*, supra. Connecticut General Statutes Section 8-42, as that statute has been interpreted by the court below, *Housing Authority of the City of New Haven*, supra, precludes public housing tenants from holding the office of commissioner of a local public housing agency. A conflict between federal and state law, even where the state law is otherwise valid, *Hamm* v. *City of Rock Hill*, 379 U.S. 306, 311-312 (1964), and not intended to frustrate a federal purpose, *Perez* v. *Campbell*, 402 U.S. 637, 651-652 (1971), is resolved as a matter of federal supremacy. *Franklin National Bank* v. *New York*, 347 U.S. 373, 378-379 (1954).

Connecticut General Statutes Section 8-42, as that statute has been applied by the court below, also conflicts with

the policy objectives of the federal agency charged with executing federal housing laws:

> "The Department of Housing and Urban Development wishes to re-emphasize its strong commitment to the practice of appointing tenants to the Boards of Commissioners of Local Housing Authorities . . . The declaration of the Congress in Section 211 complements the previously expressed policy of the Department." U.S. Department of Housing and Urban Development, Renewal and Housing Management Circular 7401.1, January 28, 1971.

A state law cannot stand when it impairs the efficiency of federal agencies charged with effectuating a Congressional purpose. *Thorpe* v. *Housing Authority of Durham*, 393 U.S. 268 (1969) *King* v. *Smith*, 392 U.S. 309 (1968); *Nash* v. *Florida Industrial Commission*, 389 U.S. 235 (1967).

II.

The Exclusion of Tenants From the Board of Commissioners of the Housing Authority Constitutes Denial of Equal Protection of the Laws Guaranteed by the Fourteenth Amendment of the Federal Constitution.

Connecticut General Statutes Section 8-42, as that statute has been applied by the Connecticut Supreme Court in the case below, *Housing Authority of the City of New Haven*, supra, precludes tenants of public housing from being considered for the office of Housing Authority Commissioner *by the fact of their tenancy* in such housing. Amici contend that the state statute as applied by the court below constitutes a denial of equal protection of the laws guaranteed by the Fourteenth Amendment of the Federal Constitution. In deciding whether a law violates the Equal Protection Clause, this Court looks to the classification in question, the individual

interests affected by the classification, and the governmental interests asserted in support of the classification. *Dunn* v. *Blumstein*, 405 U.S. 330, 335 (1972); *Williams* v. *Rhodes*, 393 U.S. 23, 30 (1968).

A. By the Operation of Connecticut General Statutes Section 8-42, as that Statute Has Been Applied by the Court below, Tenants of Public Housing are Deprived of Their Constitutional Right to be Considered for Public Office.

It is established law that a person has a federal constitutional right to be considered for public service without the burden of invidiously discriminatory disqualifications. The state may not deny to some the privilege of holding public office that it extends to others on the basis of distinctions that violate federal constitutional guarantees. *Turner* v. *Fouche*, 396 U.S. 346, 362-63 (1970). *Turner* has been applied to public offices which are elective, *Stapleton* v. *Clerk for City of Inkster*, 311 F. Supp. 1187 (1970); *Bolanowski* v. *Raich*, 330 F. Supp. 724 (1971); *Connerton* v. *Oliver*, 333 F. Supp. 201 (1971); *Socialist Workers Party* v. *Welch*, 334 F. Supp. 179 (1971); *Green* v. *McKeon*, 335 F. Supp. 630 (1971); *Mogk* v. *City of Detroit*, 335 F. Supp. 698 (1971) *Wellford* v. *Battaglia*, 343 F. Supp. 143 (1972), as well as appointive. *Rodriguez* v. *Brown*, 437 F.2d 34 (1971); *Educational Equality League* v. *Tate*, 472 F.2d 612 (1973). *Rodriguez* involved the selection of grand jurors; *Educational Equality League* dealt with appointments to a panel which nominated members to a city school board; *Turner* itself involved the selection of grand jurors who, in turn, appointed members of a school board. Amici contend that *Turner* applies no less to the appointment of public housing commissioners than to the selection of school board members or grand jurors.

B. The Classification Used by Connecticut General Statutes Section 8-42, as that Statute Has Been Applied by the Court Below, is Inherently Suspect and Works an Invidious Disqualification of the Petitioners and Persons Similarly Situated From the Exercise of Their Constitutional Right and Fundamental Interest as Citizens to be considered for Public Office.

The effect of Connecticut General Statutes Section 8-42, if not the design, is to preclude persons from holding the office of housing commissioner on the basis of poverty or race. Tenants of public housing are by definition poor. *James* v. *Valtierra*, 402 U.S. 137, 144 (1971) (Dissent); *cf.* 42 U.S.C. Sections 1402 (1) and (2). Poverty is a constitutionally disfavored classification. *Bullock* v. *Carter*, 405 U.S. 134, 144 (1972); *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663, 668 (1966); *McDonald* v. *Board of Election Commissioners of Chicago*, 394 U.S. 802, 807 (1969); *Williams* v. *Illinois*, 399 U.S. 235, 241 (1970); *Douglas* v. *California*, 372 U.S. 353, 355 (1963) *Griffin* v. *Illinois*, 351 U.S. 12, 17 (1956).

Both individual Petitioners in this action are black. Most tenants of the public housing administered by the New Haven Housing Authority are members of racial minority groups. Legislative drafting which carefully avoids express racial classifications will nevertheless fail if in fact the law's impact falls most heavily on racial minorities. *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886); *Anderson* v. *Martin*, 375 U.S. 399 (1964); *Reitman* v. *Mulkey*, 387 U.S. 369 (1967). Racial classifications are constitutionally suspect, *Bolling* v. *Sharpe*, 347 U.S. 497, 499 (1954), and subject to the most rigid judicial scrutiny. *Hunter* v. *Erickson*, 393 U.S. 385, 392 (1969); *Korematsu* v. *United States*, 323 U.S. 214, 216 (1944). They bear a far heavier burden of justification than other classifications. *McLaughlin* v. *Florida*, 379 U.S. 184, 194 (1964).

This Court will use exacting scrutiny in assessing classifications which affect fundamental interests of citizens.

Skinner v. *Oklahoma ex rel. Williamson*, 316, U.S. 535 (1942); *Sherbert* v. *Verner*, 374 U.S. 398 (1963); *Shapiro* v. *Thompson*, 394 U.S. 618 (1969). Interests which have been found fundamental are, *inter alia*, the right to travel, *Shapiro* v. *Thompson*, supra; the right to vote, *Harper* v. *Virginia State Board of Elections*, 383 U.S. 663 (1966); the right to political allegiance, *Williams* v. *Rhodes*, 393 U.S. 23 (1968); the right to procreation, *Skinner* v. *Oklahoma ex rel. Williamson*, supra; rights with respect to criminal procedure, *Griffin* v. *Illinois*, 351 U.S. 12 (1956); and education, *Brown* v. *Board of Education*, 347 U.S. 483 (1953). Amici respectfully submit that the right to be considered for public office without the burden of invidiously discriminatory disqualification is no less basic than other interests which this Court has held to be fundamental.

C. Connecticut General Statutes Section 8-42, as that Statute Has Been Applied by the Court Below, Evinces No Compelling State Interest Significant Enough to Override the Constitutional Right and Fundamental Interest of the Tenants of Public Housing to be Considered as Commissioners of Housing Authorities.

This Court has recognized that states may not casually deprive a class of individuals of constitutional liberties because of some remote administrative benefit to the state. *Carrington* v. *Rash*, 380 U.S. 89, 96 (1965); *Dunn* v. *Blumstein*, 405 U.S. 330, 351 (1972). Where the challenged classification rests on grounds wholly irrelevant to the achievement of a valid state objective, the state requirement must fall. *Bullock* v. *Carter*, 405 U.S. 134, 146 (1972); *Turner* v. *Fouche*, 396 U.S. 346, 362 (1970); *McGowan* v. *Maryland*, 366 U.S. 420, 425-426 (1961); *Kotch* v. *River Port Pilot Commissioners*, 330 U.S. 552, 556 (1947).

The court below grounded its decision on the theory of conflict of interest: ". . . a person cannot serve himself as both landlord and tenant"; *Housing Authority of the City of New*

Haven, supra, at p. 2; and the appearance of impropriety: "Anything which tends to weaken public confidence and to undermine the sense of security for individual rights is against public policy." Id., at p. 3.

Amici contend that whatever conflict of interest could arise when a person occupies both the status of public housing tenant and public housing commissioner is narrowly circumscribed. First, the vote of a commissioner who is a tenant is counterbalanced by the votes of commissioners who are not tenants. Connecticut General Statutes Section 8-41. Even in a situation where tenant-commissioners outnumber non-tenant commissioners in attendance at a commission meeting, Connecticut General Statutes Section 8-41 permits the housing authority to amend its by-laws to require a larger quorum. Second, a commissioner may be removed from office for "inefficiency, neglect of duty or misconduct in office." Connecticut General Statutes Section 8-43. Third, the state has it within its power to prescribe a less burdensome method of preventing those remote cases of self-dealing than to preclude altogether the exercise of the federal constitutional right to be considered for public office. The state, for instance, may establish procedures whereby a tenant-commissioner must disqualify himself from any commission considerations of policies which directly affect his tenancy. In an analogous situation, Connecticut employs a statutory scheme for disqualifying a member of a zoning board from considering issues in which "he is directly or indirectly interested in a personal or financial sense." Connecticut General Statutes Section 8-11. Moreover, it is to be noted that other states either by statute, opinions of Attorneys General or established practice, expressly permit tenants to serve on local housing authorities without apparent problems of self-dealing or the appearance of inappropriate conduct. *Cf.* Petitioners' Brief, p. 20.

Amici respectfully submit that Connecticut has no compelling state interest which justifies depriving public housing tenants of their constitutional right to be considered for the office of housing authority commissioner.

For the reasons stated herein, the petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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